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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

FILE: [REDACTED]
EAC 01 252 51265

Office: Vermont Service Center

Date: APR 22 2003

IN RE: Petitioner:
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Korea who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. § 1151(b)(2)(A)(i) or § 1153(a)(2)(A) based on that relationship; and (3) is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner has attempted, to the maximum ability under her control, to obtain proof of the U.S. citizenship of her spouse. He states that on July 24, 2001, the petitioner filed a Freedom of Information/Privacy Act Request (FOIA), Form G-639, but for the failure of the Service to furnish a copy of the file and supporting documents requested, the petitioner has been unable to satisfy this requirement. Counsel submits additional evidence.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen

or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner last entered the United States as a visitor on September 5, 1996. The petitioner married her spouse on January 2, 1999 in Las Vegas, Nevada. On August 13, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

PART I

8 C.F.R. § 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States.

Because the petitioner provided no evidence to establish that her spouse is a United States citizen as claimed, she was requested on October 11, 2001, to submit evidence of his citizenship. On appeal, counsel states that the petitioner filed a FOIA request on July 24, 2001, but that the Service had not responded to the request. He submits a copy of the FOIA request and a copy of the Service's response to the request, dated August 27, 2001, indicating that the Service responds to requests on a first-in, first-out basis and on a multi-track system, and that the petitioner's request was placed on the complex track. While counsel contends that the petitioner has attempted, to the maximum ability under her control, to obtain proof of the U.S. citizenship of her spouse, it should be noted that the AAO lacks authority to adjudicate FOIA requests.

Counsel also submits a copy of the Service's notice of denial of the petitioner's application for adjustment of status to permanent residence, dated April 30, 2001, in which the Service stated, in part: "....visa petition by which you filed your application for permanent residency (I-485) is based upon an I-130 visa petition filed on your behalf by your United States citizen spouse...." Counsel contends that the petitioner's spouse is a United States citizen based on this decision of the Service.

A search of the Service electronic records reflects that the petitioner's spouse, [REDACTED] was naturalized a U.S. citizen on June 28, 1984. Based on this electronic record and the Service's April 30, 2001 notice of denial of the Form I-485 indicating that the petitioner's spouse is a U.S. citizen, it appears that the petitioner's spouse is, in fact, a U.S. citizen.

The petitioner has, therefore, overcome this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(A).

PART II

8 C.F.R. § 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. § 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. 8 C.F.R. § 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The petitioner indicated on Part 7 of the Form I-360 that her spouse [REDACTED] had been married two times. Because the petitioner did not provide proof of the legal termination of the marriage between [REDACTED] and his former spouse prior to his marriage to the petitioner, the petitioner was requested, on October 11, 2001, to submit proof of the legal termination of the prior marriage. The petitioner failed to comply. On appeal, the petitioner neither addressed nor submitted the requested document.

The petitioner has failed to overcome this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(B).

PART III

8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance,

criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the petitioner failed to establish that she is a person of good moral character. Examples of evidence the petitioner may submit to establish good moral character under 8 C.F.R. § 204.2(c)(2)(v) were listed by the director in his request for additional evidence on October 11, 2001. On appeal, counsel submits a criminal record check from the State of California, Department of Justice, indicating that the petitioner's fingerprints reveal no criminal history record in their files. The petitioner, however, failed to submit a self-affidavit attesting to her good moral character.

The petitioner has failed to overcome this finding of the director, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(F).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.